

Questions for the Record Submitted to  
Ambassador Christopher Burnham by  
Representative Chris H. Smith  
Subcommittee on Africa, Global Human Rights, and International Operations  
For the Hearing:  
“Foreign Relations Authorization FY 2005-2006: Department of State Management  
Initiatives”  
Thursday, April 14, 2005

Question:

Embassy Security - Can you get us an updated figure regarding the current percentage of Embassies and Department overseas facilities which fail to meet security standards (Burnham cited the 70% figure from the 1998 Crowe study).

Response:

Issued after the August 1998 East Africa embassy bombings, the Crowe report stated that over 85 percent of all embassies and consulates did not meet security standards. In response, the Department began planning its largest-ever construction program – replacing 191 non-secure/unsafe facilities. We have over 65 new embassy and consulate compounds (NECs) that have been completed or are under construction, design, and/or budgeting. If the Department’s Long Range Overseas Buildings Plan is funded as proposed through FY 2006, approximately 44 percent of our embassies and consulates will meet or be under construction to meet security standards, leaving approximately 56 percent that will still not meet standards.

In addition, however, we would point out that funding provided in FY 1999 and subsequent years has allowed the Department to implement security upgrades and countermeasures at embassies and consulates worldwide. These major enhancements have hardened the physical security of our posts, but many remain vulnerable and still require replacement, primarily because of the lack of setback.

The long-term solution in this era of global threat against our mission and personnel abroad remains the continuation of a robust Capital Security Building Program. Toward this end, the Congress enacted in the FY 2005 Consolidated Appropriations Bill a Capital Security Cost-Sharing Program. This program allocates the capital costs for new embassy construction to all U.S. Government agencies with presence abroad based on the number of authorized overseas positions. The program will reduce the time to complete our NEC requirements from 26 years to 14 years. The Department appreciates the support we have received from Congress for this program.

Question:

*Consequences of High Energy/Oil Prices:* Given the rise of oil prices, does the buying power and maintenance account adequately provide funds to address increased cost of

transportation for the State Department? What does the State Department intend to do to cope with the increased cost of fuel?

Response:

The Buying Power Maintenance Account is intended to sustain approved levels of activities overseas under conditions of adverse exchange rate fluctuations. The worldwide decline in the dollar's value in recent years fully depleted the account in both FY 2003 and FY 2004, making the account unavailable for use in FY 2005. Individual environmental, safety, and regulatory controls in each country, including the United States, make central management of global fuel usage extremely impractical and problematic. Further, since the cost of fuels is affected by the particular economic conditions in a given country, regional bureaus have been addressing the budgetary impacts through internal reallocations of resources. It also should be noted that the Department of State incorporates energy saving techniques and materials into the design and construction of New Embassy Compounds and government-owned and long-term leased residential housing.

Question:

*AFSA Issues:* What is the Department's view of the AFSA proposals to strengthen the enforcement authority of the Foreign Service Grievance Board?

Response:

We understand that the proposals in question are those contained in attachments to AFSA President John Limbert's letter of February 25, 2005, to Senate Foreign Relations Committee Chairman Richard Lugar. We have the following comments on those AFSA proposals.

***Proposal a.*** *The Foreign Service Grievance Board should have the authority to enforce its decisions.*

AFSA asserts that the fact that the Foreign Service Grievance Board does not have "authority to enforce its decision" ... "has allowed agencies to ignore Board decisions." That is not the case with grievance from State Department employees (we cannot comment on the USAID case which AFSA cites).

The only State Department case cited by AFSA involved an employee of the Department who, in 1989, was convicted of fraud and dismissed under Section 610 of the Foreign Service Act of 1980 (22 U.S.C. 4010) despite the non-concurrence of the FSGB. The provision cited establishes a procedure for separation of employees for cause; it is not part of the Grievance Statute (although it requires that the Board uses the same procedures it uses for grievances). This point is important because the AFSA proposal is to amend the grievance statute, which covers many matters other than separation. (Most grievances concern performance evaluations.)

In the case cited above, a U.S. Court of Appeals held that the Department is obliged to follow a Board decision issued under the authority of 22 U.S.C. 4010. We recognize that holding as legally binding, and we see no need to codify the Appeal Court's decision. (The employee in question was reinstated years ago and still works for the Department.)

We emphasize that the Department implements FSGB decisions even when it strongly disagrees with them. (On the rare occasion when implementation of a Board decision is delayed, it is because we are consulting with the Department of Justice about appealing it to court.) There is no need to establish a more formal enforcement mechanism.

***Proposal b.*** *The FSGB's interim relief authority should be expanded to provide a stay in cases involving the collection of alleged overpayments of annuities.*

This amendment is unnecessary, because the Department already suspends collection activity in annuity overpayment cases whenever grievances concerning such cases are pending before the Board.

***Proposal c.*** *The FSGB should have the authority to adjudicate cases regarding the operation of a Foreign Service Reduction in Force (RIF).*

The Department opposes this amendment. It would allow time-consuming grievances about performance evaluations; that would frustrate the principal intent of the 1995 RIF legislation, which was to design a RIF system whose effects would be predictable and not easily undermined by reinstatements.

By permitting grievances about performance appraisals, the AFSA proposal would provide much greater protection against RIFs for Foreign Service employees, who have between two and five years to grieve performance evaluations, than for Civil Service employees, who must grieve their appraisals within 30 days.

Currently, an employee facing a RIF may grieve any violation of RIF procedures; that is an adequate safeguard against agency abuse of the RIF process.

The Department has not had any RIF since the current legislation was enacted, and does not anticipate any. However, we believe that should a RIF become necessary, the Department's ability to manage it would be severely handicapped under the amendment proposed by AFSA.

***Proposal d.*** *The Foreign Service Grievance Board should have the authority to issue subpoenas requiring the attendance and presentation of testimony of individuals, and the production of documentary or other evidence.*

Under this proposed amendment, which is copied almost verbatim from 5 U.S.C. 1204(b)(2), the FSGB would have the same sweeping subpoena authority (backed up by contempt-of-court sanctions) which the Merit Systems Protection Board now has. That

authority would allow the Board to subpoena “any individual...any place in the United States... .”

AFSA claims that this amendment is necessary to obtain testimony and documents from former Department employees. (Current law gives the Board authority to require testimony and documents only from current employees.)

The Department opposes this amendment as unnecessary. We are unaware of any case where a grievant was prejudiced by not being able to obtain a statement or a document because the target of the grievant’s inquiry was not an active employee of the Department.

Further, the provision could prove costly, since it would require that any witness subpoenaed by the Board “be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.”

**Conclusion:**

As a general rule we do not favor expanding the authorities of the FSGB, because the Board insists on taking what we believe is an overly broad view of its power. The Board’s view of the breadth of its authority had led it, for example, to make medical diagnoses; to direct the removal of documents from security files; to order a Director General of the Foreign Service to sign a statement which he believed was false; to ignore a District Court order vacating a Board decision; and otherwise to act beyond what we believe the law and good sense would permit.

**Question:**

What is the Department's view of AFSA's proposal for increased flexibility for death gratuity payments?

**Response:**

We are aware that the Administration is seeking an increase in death benefits for the uniformed services. We understand that Administration is reviewing the issue of death benefits for USG civilians killed in the performance of duties overseas.

**Question:**

Since you mentioned the Western Hemisphere Travel Initiative as a high priority for the Department, can I ask you to elaborate on that? You are seeking to raise the ceiling on passport revenues that State can retain to accommodate the anticipated surge in new U.S.

passports for those who want to travel to Canada and Mexico. How much money do you anticipate will be needed to double the number of passport issuances?

Response:

The Western Hemisphere Travel Initiative (WHTI), which we are implementing in cooperation with the Department of Homeland Security (DHS) and in accordance with the requirements of Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004, has significant resource ramifications for the Department of State. We believe that the annual passport productions requirement will grow to 17.2 million by 2008. This compares to a projected workload production of 10.5 million for the current fiscal year. To meet this projected demand the Department will need an additional \$431 million over this period. These costs include government staff, production materials, especially the cost of the high-security biometric passport that we will issue to our citizens, systems support, labor contract, facilities, and other support.

It should be noted that projections for this program are still being refined, especially in terms of persons affected by the land border deadline of December 31, 2007. DHS reports that there were more than 100 million land border crossings by U.S. citizens in FY 04. While we plan to survey these border crossers in the near future, we do not currently know how many individual citizens this represents or whether or not they already have appropriate documentation. Also, as President Bush and some Congressional representatives of Border States have voiced concerns about requiring passports for entry into the U.S. at the land borders, we hope that some of the demand for land border crossers may be fulfilled by registered travel documents issued by DHS.